IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE MR JUSTICE V.V.S.RAO
WRIT PETITION NO : 5095 of 2004

Between:
Mohd. Soheb Hasan, son of Syed Sydul Hasan
Road No.3 , Banjara Hills Hyderabad

..... PETITIONER

AND

1 Registrar, Osmania University, Hyderabad.
2 Controller of Examinations, Examinations Branch ,
Osmania University , Hyderabad.
3 Principal, Mukhafum Jan College of Engineering and Technology,
Road no.3, Banjara Hills, Hyderabad.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of Mandamus or any other appropriate writ declaring that the action of the 2nd respondent contained in Proceedings No. 1258/BE/EXams/2004 dt.12.03.2004 imposing the punishment of prohibiting the petitioner from pursuing any educational course for one year and not declaring the result of the B.E. Examinations of the petitioner in the session November/December 2003 is arbitrary and illegal and direct the respondents to declare the result of the petitioner in respect of the said examinations to enable the petitioner to pursue BE. IV year course and grant such other relief as it deems fit in the circumstances of the case.

Counsel for the Petitioner: MR.V.VENKATARAMANA

Counsel for the Respondent Nos.1 and 2: MR.DEEPAK BHATTACHARJEE, Standing Counsel for Osmania University

Counsel for the Respondent No.3:

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.5095 OF 2004

ORDER:

The petitioner is a student of B.E. On allegation that he resorted to malpractice while appearing II Year first semester examinations, by proceedings dt.19.1.2004 second respondent informed the decision of the Committee on Malpractice Cases (CoM) awarding punishment of cancellation of the result of all examinations taken or proposed to be taken during the Session and prohibiting the petitioner admission to or continuation in any course of the University for a period of one year. The petitioner challenged the same in Writ Petition No.1475 of 2004. This Court by order dt.23.2.2004 allowed the Writ Petition. While setting aside the order of second respondent dt.19.1.2004, this Court remitted the matter to CoM and directed the petitioner to appear before the said Committee which was directed to pass appropriate orders in the matter. Second respondent issued proceedings dt.12.3.2004 informing the decision of CoM imposing the same punishment. Assailing the communication dt.12.3.2004, present Writ Petition is filed. This Court admitted the Writ Petition on 18.3.2004 and permitted the petitioner to attend classes in the third respondent college and observed that he would not be entitled to claim any equities in future. Later, the petitioner moved this Court to expedite hearing of the Writ Petition. This Court directed that the matter be listed for final hearing in December, 2004. However, on a mention made before this Court by the learned counsel for the petitioner, the matter was heard finally on 22.9.2004 and 24.9.2004.

The events leading to filing this case may be noticed in some detail. When II year first semester final examinations were held on 7.11.2003 the petitioner appeared for examination in the paper called 'Electro Magnetic Theory' at Vasavi Engineering College Centre. He completed the examination and handed over the answer script to the invigilators. Nobody alleged any adverse things against him. On 18.11.2003 when he went to examination centre, the invigilator did not permit him to write the examination in 'Logical Switching Theory'. On 24.12.2003 third respondent served a show cause notice issued by second respondent informing that the petitioner committed an objectionable act amounting to act of malpractice as reported by the

Chief Superintendent, Vasavi College of Engineering and he was directed to show cause as to why action should not be taken against him. He was also asked to appear before CoM on 6.1.2004 at 3.00 p.m. He alleges that second respondent refused to receive explanation, but on 6.1.2004 when he appeared before the CoM he was asked to give representation seeking apology for the malpractice as otherwise, he would be debarred for a period of five years. He alleges that due to such inducement that he would be let off with minor punishment, he gave letter on 6.1.2004 as dictated by second respondent. Later, by proceedings dt.19.1.2004 second respondent informed the decision of CoM imposing punishment debarring him from University examinations for a period of one year.

The petitioner filed a writ petition being W.P.No.1475 of 2004, which was allowed and the matter was remanded to CoM of the Osmania University. This Court also observed in the said judgment that no importance can be attached to the explanation dt.6.1.2004 given by the petitioner. Be that as it is, second respondent issued a notice dt.26.2.2004 to show cause as to why action should not be initiated against petitioner for resorting to malpractice and for imposing punishment in terms of the Regulations under Ordinance No.VII. The petitioner submitted an explanation on 1.3.2004 denying the allegation that he indulged in the act of malpractice by substituting papers of answer book after removing pins with pages with written matter brought from outside. CoM considered the matter and imposed punishment under Rule 12 of the Ordinance VII by virtue of which examinations taken by the petitioner in B.E. II/IV I-Semester (Supplementary) are cancelled and further the petitioner was prohibited from taking admission to any course of the university for a period of one year.

The Registrar of Osmania University filed a counter affidavit opposing the Writ Petition stating as follows. The Chief Superintendent of Examinations, Vasavi College of Engineering submitted a report on 7.11.2003 stating that the petitioner indulged in malpractice by removing papers from the main answer book and replacing them with pre-written matter brought from outside. The said report was also attested by M/s.K.Srinivasa Rao, T.Rama Mohan Rao and E.V.S.Sekhar Rao. Therefore, a show cause notice dt.24.12.2003 was issued to petitioner for appearing before the CoM on 6.1.2004. Before the said Committee petitioner submitted a letter dt.6.1.2004 tendering apology for the act committed. Based on the admission made by the petitioner, CoM recommended imposition of punishment under Rule 12 of Ordinance No.VII on 6.1.2004. Accordingly, the decision was communicated by letter dt.19.1.2004. After the said letter was set aside by this Court on 23.2.2004 in Writ Petition No.1475 of 2004, second

respondent issued a detailed show cause notice dt.26.2.2004 enclosing a copy of the report of the Chief Superintendent of Vasavi College of Engineering dt.7.11.2003, Malpractice Case Report dt.6.1.2004, and letter written by the petitioner dt.6.1.2004. The petitioner was asked to appear for hearing at 4.00 p.m. on 1.3.2004. The petitioner appeared before CoM which recorded the submissions made by the petitioner. The CoM appreciated every question raised by the petitioner in proper perspective and recommended punishment as provided under Rule 12 of Ordinance No.VII. Based on the detailed proceedings of CoM, second respondent again issued impugned order in terms of the Regulations.

It is alleged that on 7.11.2003 the Invigilator and Chief Examiner detected that the petitioner replaced internal papers of his answer book with pre-written paper book brought from outside. It is further alleged that petitioner's handwriting in the answer script and the petitioner's handwriting in his letter dt.6.1.2004 would show that both are different and the handwriting in the internal papers of answer script are not that of the petitioner. The CoM probed into the matter and pointed out that the handwriting is not same. It is alleged that the petitioner managed to bring pre-written papers inside examination hall and replaced original papers in the paper book. As per the prevailing practice, the answer script is properly checked after it is handed over by a student before all the answer scripts are bundled by invigilators in the presence of Chief Superintendent of Examinations. After the petitioner left examination hall on 7.11.2003 invigilator detected that the pin of the answer script was tampered and that pre-written matter was inserted by the petitioner. Based on the report of the Chief Superintendent of Examinations, decision was taken not to permit the petitioner to write examinations on 18.11.2003.

The counter affidavit states that after the matter was remitted to CoM a show cause notice was issued and every aspect of the case was considered by CoM consisting of Senior Professors and Experts, who came to the conclusion that the petitioner is guilty of committing act of malpractice. The CoM applied its mind, appreciated the evidence, took into consideration the written submissions made against show cause notice and forwarded recommendation to the Controller of Examinations. The petitioner was given proper chance to defend himself and to peruse all the documents. Therefore, this Court cannot re-appreciate the decision of CoM as Court of Appeal. The petitioner has effective alternative remedy under Ordinance No.VII and therefore the Writ Petition is liable to be dismissed for not exhausting the same. The Ordinance and the Rules are framed by the Academic Senate in exercise of its powers under Section 25 of the A.P. Universities Act,

1991 which have statutory force and that punishment is imposed strictly in accordance with the Rules.

Learned counsel for the petitioner, Sri Vedula Venkata Ramana, submits that the impugned order does not disclose any reasons and the reasons are sought to be substituted by producing material including proceedings of CoM. As respondents 1 and 2 exercise statutory powers, they cannot be permitted to do so and for non-disclosure of reasons, the impugned order must be invalidated as it is vitiated by non-disclosure of reasons. Secondly, he would urge that there is no finding in the impugned order to the effect that petitioner has resorted to any malpractice. Lastly he would urge that in a case where a public authority fails to exercise jurisdiction properly having regard to controlling statutes, it is always open to the Court to consider the merits of the case and give appropriate relief to the aggrieved person. **Per contra,** learned Standing Counsel for Osmania University, Sri Deepak Bhattacharjee contends that the petitioner was given ample opportunity to represent his case and after hearing him, CoM recorded elaborate proceedings on 1.3.2004 based on which second respondent issued impugned proceedings on 12.3.2004. The petitioner has resorted to serious malpractice in replacing the answer scripts with pre-written material brought from outside and therefore the decision taken by the respondents is valid and sustainable.

Initially, by order dt.19.1.2004 second respondent prohibited the petitioner from continuing in any course for a period of one year besides cancelling B.E. II/IV I-Semester examinations. This Court set aside the same by order dt.23.2.2004 in Writ Petition No.1475 of 2004. Thereafter, second respondent issued show cause notice dt.26.2.2004 alleging that the petitioner has indulged in act of malpractice by substituting the papers of the answer sheets after removing the pins with pages with written matter brought from outside and therefore he is directed to show cause as to why action should not be initiated for resorting to malpractice and for imposing punishment in terms of Malpractice Regulations. The petitioner submitted a detailed explanation on 1.3.2004. The petitioner denied the allegation that he inserted written matter in the answer book by removing the pins of the answer book. Admittedly, petitioner appeared before CoM on 1.3.2004 when statedly the said Committee enquired into the matter in detail. Curiously, an order dt.12.3.2004 was communicated to petitioner by second respondent, which reads as under.

As per the direction of the Honourable High Court in the above referred Writ Petition, a fresh Show Cause Notice was issued to you on 26.2.2004 fixing the 01.03.2004 at 4.00 p.m. as the date and time for providing the personal hearing. Copies of all the relevant material papers were also enclosed with the show cause notice. In response to the show cause, you

submitted a reply, dated 1.3.2004. The Malpractice Committee appreciated the allegations and the documentary evidence to support the allegations and also your reply in its true perspective and thereafter categorically held that you are guilty of committing the act of malpractice and hence you are liable for the punishment under Rule 12 of Ordinance No.VII (Malpractice Rules). The Malpractice Committee consisting of Prof. D.N.Reddy, Prof.M.R.K.Murthy, Prof. B.S.Reddy, Prof. T.A.Janardhan Reddy and Prof. P.Veeresham provided you clear right of hearing and in addition to appreciating the reply, also provided you the right to make you own submissions. Therefore, it is now confirmed that as per the direction of the Honourable High Court in W.P.No.1475 of 2004, the Malpractice Committee provided you the right of hearing and after appreciation of evidence, confirmed the commission of the act of malpractice by you and recommended the punishment provided under Rule 12 of Ordinance No.VII.

Therefore, taking into consideration the recommendation of the Malpractice Committee, you are imposed punishment under Rule 12 of Ordinance No.VII, by virtue of which the result of all the examinations taken by you i.e., B.E. II/IV I-Semester (Supplementary) Examination & any other Semester appeared in the Session of November/December 2003 as per University Press No.223/B.E./Exams/2003, dated 19.09.2003, under Hall Ticket No.04020487 are cancelled and further you are prohibited from taking admission to any course of the University for a period of One Year.

A perusal of the above impugned order would show that the same is issued to comply with empty formality of issuing notice and hearing the petitioner. There is no application of mind as to what is the allegation, what is the explanation of the petitioner, whether this disputed facts is supported by any evidence, whether the facts deduced from the material lead to an inference, and whether it is a case which falls under Malpractice Regulations. All these are absent. As rightly pointed out by the learned counsel for the petitioner, even a finding as alleged in the show cause notice, is conspicuous by its absence in the impugned order. CoM is admittedly a body constituted under statutory ordinance exercising statutory powers. A public authority, like CoM is least expected to pass such a bald order. Can it be permitted to explain supporting reasons by way of counter affidavit or by producing record ?

It is now axiomatic that the orders made by public authorities in exercise of statutory powers cannot be construed in the light of explanations subsequently given by such public authority, nor such public authorities can explain the reasons by way of rejoinder filed in a case seeking judicial review of decision (See **Commissioner of Police v. Gordhandas**[1] **and Mohinder Singh v. Chief Election Commissioner**[2]**)**.

As seen from the impugned order extracted above, nothing turns on the same. Though the learned Standing Counsel made strenuous efforts to justify the impugned order relying on proceedings of CoM,

dt.1.3.2004 as well as other material, this Court is not inclined to countenance the submission. The whole exercise, thus far, must go.

This is a second round of litigation by petitioner with reference to allegations of malpractice. Whether this Court while setting aside the impugned order should remit the matter again to second respondent and CoM? No doubt, as rightly pointed out by the learned counsel for the petitioner, it is within the powers of this Court to issue a Writ of Mandamus or to issue directions to the public authority who failed to exercise or wrongly exercise discretion conferred upon it by Statute and need not remit the matter (See **The Comptroller & Auditor General v. K.S.Jagannathan**[3]). But, after giving anxious consideration to this case, and also having regard to the fact that handwriting of petitioner in the answer script in the paper 'Electro Magnetic Theory' and his handwriting as seen in his explanation dt.6.1.2004 created a doubt in the mind of the Court, I am not inclined to apply the principle in this case. Further, in this case, the CoM has not at all given any reasons nor recorded any finding as to involvement of the petitioner in an objectionable act in public examinations. Therefore, I am not inclined to adjudicate the question whether the petitioner has resorted to malpractice or not. It would be in the interest of justice to direct the second respondent herein to consider the matter afresh and pass appropriate orders.

Accordingly, for the above reasons, the impugned order is set aside and the matter is remitted to second respondent for passing appropriate orders based on the material. The Court also observes that the petitioner has already suffered for about a year and though he has completed the B.E. course by reason of the orders of this Court he could not appear in the examinations. The second respondent may also keep this in mind because Ordinance No.VII vests the discretion in the authority and the same also impliedly gives power to take a lenient view even if the malpractice is proved and circumstances so warrant. The fact that the petitioner suffered for one year is a strong circumstance which must influence the decision making by second respondent while imposing punishment. Therefore, the matter is remitted to second respondent who is directed to pass appropriate orders within a period of one week from the date of receipt of a copy of this order.

The Writ Petition, subject to above observations and directions, is accordingly allowed. There shall be no order as to costs.

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(V.V.S.RAO, J)

29.9.2004

bnr

Note:Issue CC today.
(B.O)
bnr

The Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this

Wednesday, the Twenty Ninth day September Two Thousand and Four

ASSISTANT REGISTRAR

To

1. The Registrar, Osmania University, Hyderabad.
2. Controller of Examinations, Examination Branch,
   Osmania University, Hyderabad.
3. Principal, Mukhafum Jan College of Engineering and Technology,
   Road no.3, Banjara Hills, Hyderabad.
4. 2 CD copies.

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[1] AIR 1952 SC 16

[2] AIR 1978 SC 851

[3] AIR 1987 SC 537 (para 20)